

INTERNAL SCHOOL FINANCE/SCHOOL LAW
“WHERE SCHOOL FINANCE MEETS SCHOOL LAW”

HOSTED BY:

SCHOOL SUPPORT ORGANIZATIONS



JOHNSON CITY SCHOOLS
SEPTEMBER 25, 2023



Presented by:
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INTRODUCTION

- To be totally transparent:
 - I do not work for the Comptroller’s Office, IRS, DOJ, CIA, nor any other three letter agency...
 - I am not your boss...and cannot tell you what to do...
 - You do have the right to remain silent (although I hope you will ask questions)...
 - However, nothing you say here today will be used against you...
 - Vegas rules apply...what is said here, stays here...
 - Reasonable minds will differ...i.e., I am not here to argue with anyone about what’s right, what’s wrong, well, what if, etc...
 - Fair enough...

SCHOOL SUPPORT ORGANIZATIONS (SSOs)




• **TOPICS:**

- ISSUE: CONTROL
- MISAPPROPRIATED FUNDS/ REPORTING FRAUD
- HISTORY AND CREATION
- INDIVIDUAL STUDENT ACCOUNTS
- SCHOOL FEES
- GAMES OF CHANCE
- REQUIRED ANNUAL REPORTING – STATE AND FEDERAL
- BOARD MEMBER RESPONSIBILITIES AND LIABILITIES
- INTERNAL CONTROLS
- CREDIT/DEBIT CARDS
- SALES TAX
- SALARY SUPPLEMENTS
- MISCELLANEOUS QUESTIONS




ISSUE: DISTRICT/SCHOOL CONTROL OVER SSOs

We are having a few issues with a couple of our school support organizations (hereinafter "SSOs"). I (district finance director) have asked the officers/directors of the SSOs to provide additional documentation on certain expenditures listed in the organizations' statement of revenues and expenditures filed with the Board of Education. While our independent public accountant was here auditing the individual schools, I spoke with him about my concerns. He stated, in no uncertain terms, that I could not ask for additional documentation because SSOs were separate, independent corporations, thus neither the school district nor the schools had any control over the SSOs. He has been involved with an SSO in another county; however, his answer concerns me. Can you elaborate?

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ISSUE: DISTRICT/SCHOOL CONTROL OVER SSOs

- Schools have no control of SSOs...Not exactly true.
- In Tennessee, we have ***Dillon's Rule***
 - "Municipal corporations (including boards of education) owe their origin to, and derive their powers and rights wholly from, *the legislature*. It breathes into them the breath of life, without which they cannot exist. As it creates, so may it destroy."
 - **Note:** In no way am I implying SSOs are governmental agencies or even quasi-governmental agencies; however, Tennessee laws are permissive and SSOs were created by state statute.

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ISSUE: DISTRICT/SCHOOL CONTROL OVER SSOs

On multiple occasions, the Attorney General has used the phrase

- "If the Tennessee legislature had intended to provide authority to local school boards to [do whatever]..., it would have expressly provided such authority."
- Which is...***Dillon's Rule***
- In my opinion, if the Tennessee legislature had intended for districts/schools to have absolutely no control over SSOs, it would have expressly said so. The Legislature did not state such.

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ISSUE: DISTRICT/SCHOOL CONTROL OVER SSOs

“It breathes into them the breath of life, without which they cannot exist.”

- SSOs were created solely by legislative act...see Tenn. Code Ann. §49-2-601, *et seq*, better known as the *School Support Organization Financial Accountability Act*.
- without which, SSOs could not and would not exist...

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ISSUE: DISTRICT/SCHOOL CONTROL OVER SSOs

- *“As it creates, so may it destroy.”*
- Tenn. Code Ann. §49-2-604(a), provides, “A group or organization **may not use** a school district's or school's name, mascot or logos, property or facilities for the raising of money, materials, property or securities **until a policy has been adopted by the local board of education** concerning cooperative agreements, school support organizations and the use of school facilities for fundraising purposes.”
- The Legislature created SSOs by adopting the Act, and set forth a way to destroy...No Board Policy, No SSOs...
- Furthermore, a Board can rescind a Board Policy...

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ISSUE: DISTRICT/SCHOOL CONTROL OVER SSOs

- *“As it creates, so may it destroy.”*
- Tenn. Code Ann. §49-2-604(b)(1)(A) provides, “Prior to soliciting, raising or collecting money, ... a school support organization **shall submit to the director of schools or the director's designee a form that, at a minimum, documents... its status as a nonprofit, goals, objectives, contact information, etc.**
- So even if the board adopts a policy, if the information as outlined by state statute is not submitted to the director of schools (or designee), the SSO cannot operate.
- Same holds true for information in future years...submitted prior to the **beginning** of the school year (see *Manual* page 2).

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ISSUE: DISTRICT/SCHOOL CONTROL OVER SSOs

- “If it may destroy, it may abridge and control.”
- Tenn. Code Ann. §49-2-604(h) provides, “A local board of education may adopt a policy that is more restrictive than the requirements of subsection (b)” (see previous slide).
- “If the Board of Education implements policies that are more restrictive than those presented in the Model Financial Policy, ***the more restrictive policies of the Board of Education shall be applied***” (see *Manual* page 7).
- Tenn. Code Ann. §49-2-604(f) provides, “A school support organization shall provide, ***upon request***, to officials of the local school board, local school principal or auditors of the office of the comptroller of the treasury access to all books, records and bank account information for the organization.”

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ISSUE: DISTRICT/SCHOOL CONTROL OVER SSOs

- “If it may destroy, it may abridge and control.”
- Tenn. Code Ann. §49-2-604(b)(2) provides, “The ***approval*** of the director of schools or the director’s designee shall be required before a school support organization *undertakes any fundraising activity*.”
- In my opinion, districts/schools do have responsibilities in regard to SSOs, including, but not necessarily limited to, when there is reasonable suspicion that fraud has occurred.

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ISSUE: DISTRICT/SCHOOL CONTROL OVER SSOs

- In my opinion, the Legislature intended for school district’s and school’s have oversight responsibilities and fiduciary duties pertaining to the operations of SSOs. If the Legislature had not intended for district’s/school’s to have such responsibilities, the Legislature would have said so.
- Audit Report...Lady Bulldog Softball Boosters

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HEADLINES
(THAT WE DO NOT WANT TO SEE)

- Former school booster club treasurer charged with theft in Rutherford County
 - RUTHERFORD COUNTY, Tenn. (WKRN) – A Rutherford County Grand Jury has **indicted** the former treasurer of the Blackman High School Boys Soccer Booster Club on a theft charge after she allegedly stole at least \$6,989 (emphasis added).

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HEADLINES
(THAT WE DO NOT WANT TO SEE)

- Ex-band high school band booster club treasurer indicted for theft
 - CHEATHAM COUNTY, Tenn. (WKRN) – The former booster club treasurer for Cheatham County Central High School's band has been **indicted** on theft charges (emphasis added).
- Ethics complaint filed in Bearden softball boosters issue
 - "In short two Bearden High School Softball parents are responsible for paying a loan on a facility that should have NEVER been constructed," the complaint reads.

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HEADLINES
(THAT WE DO NOT WANT TO SEE)

- Campbell County Booster Club President Indicted For Theft
 - A special investigation by the Tennessee Comptroller's Office has found that..., president of the Campbell County High School Choral Booster Club, stole at least \$6,502 from the booster club. The investigation found that ... stole cash, transacted checks, and used the booster club bank card for her personal benefit.

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HEADLINES (THAT WE DO NOT WANT TO SEE)

- Report: Blackman football coaches got cash from boosters' accounts
 - MURFREESBORO — Bank accounts from the Blackman High School football boosters were used to provide nearly **\$100,000 in supplemental cash and gift cards to the football team's coaches** and for other purposes between 2011 and 2015, according to a report released by the Tennessee comptroller of the Treasury (emphasis added).
- And these reports go on and on and on....
 - Memo 05/14/2020 - Over the past five years, reports pertaining to fraud in SSOs have accounted for over ten percent of investigative reports released by the Comptroller.

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SCHOOL SUPPORT ORGANIZATIONS

Tenn. Code Ann. §49-2-604(e), **requires**

- 1) that a school support organization's officers **ensure that funds are safeguarded and only spent for purposes related to the goals and objectives of the organization.**
- 2) the **organization adopt and maintain a written policy specifying reasonable procedures for accounting, controlling, and safeguarding school support organization money and other property** (see *Manual* page 2).

Note: The *Manual* "provides **minimum required** accounting policies and internal controls...SSOs must follow the required accounting policies and the required internal control procedures listed herein" (see *Manual* page 2).

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SCHOOL SUPPORT ORGANIZATIONS – MISAPPROPRIATED FUNDS 2015 – 2023



Misappropriation is the intentional, illegal use of funds of another for one's own use or other unauthorized purpose; particularly by a person with a responsibility to care for and protect another's assets...a fiduciary duty.

Note: SSOs **must immediately** contact the Comptroller's Office if **fraud is suspected**.

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**SCHOOL SUPPORT ORGANIZATIONS –
MISAPPROPRIATED FUNDS 2015 – 2023**

District/School	Date of Report	Organization	Misappropriated Funds (rounded)
Campbell County High School	October 21, 2015	Choral Boosters	\$ 6,502
Blackman High School	December 22, 2015	Boys Soccer Booster Club	6,989
West Cheatham Elementary	February 17, 2016	PTO	7,450
Cheatham County Central High School	March 18, 2016	Band Boosters	3,072
Blackman High School	April 7, 2016	Football Boosters *	166,065
Lincoln County High School	February 8, 2017	Band Boosters	11,538
Richland Elementary School	May 5, 2017	PTO	5,649
Arlington Middle School	June 2, 2017	Dance Team Booster Club	11,059

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**SCHOOL SUPPORT ORGANIZATIONS –
MISAPPROPRIATED FUNDS 2015 – 2023**

District/School	Date of Report	Organization	Misappropriated Funds (rounded)
LaFollette Elementary School	November 3, 2017	PTO	\$ 8,286
Science Hill High School	November 17, 2017	Boys Basketball Boosters	6,150
Collierville Middle School	November 28, 2017	Band Boosters	133,064
Ridgeview Elementary School	March 12, 2018	PTO	9,625
Balmoral Ridgeway Elementary School	June 11, 2018	PTO	2,487
South Middle School	November 8, 2018	Athletic Booster Club	4,927
Cumberland Elementary School	November 20, 2018	PTO	17,724
Jasper Elementary School	February 13, 2019	PTO	5,590

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**SCHOOL SUPPORT ORGANIZATIONS –
MISAPPROPRIATED FUNDS 2015 – 2023**

District/School	Date of Report	Organization	Misappropriated Funds (rounded)
H.G. Hill Middle School	March 21, 2019	PTO	\$ 31,490
Houston High School	July 26, 2019	Football Booster Club	20,112
Roosevelt Elementary School	November 15, 2019	PTA	5,534
MLK Magnet School	December 5, 2019	Band Boosters	474
Parsons Elementary School	January 23, 2020	PTO	2,193
Apollo Middle School	September 17, 2020	PTA	2,571
Isaiah T. Creswell Middle School	October 8, 2020	PTSO	2,605
Inglewood Elementary School	October 8, 2020	PTO	5,781

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SCHOOL SUPPORT ORGANIZATIONS – MISAPPROPRIATED FUNDS 2015 – 2023			
District/School	Date of Report	Organization	Misappropriated Funds (rounded)
Clinton High School	April 15, 2021	Baseball Boosters	1) Violation of Nonprofit Gaming Law (Raffles) 2) Failed to Receive Approval for Fundraisers 3) Failed to Adequately Account for Collections
Tellico Plains Elementary	May 12, 2021	PTO	\$ 22,932
Madison Academic	May 17, 2021	Rebounders Club	7,583
A.Z. Kelley Elementary	July 12, 2021	PTA	5,589
Springhill School	July 27, 2021	PTO	17,586
Ashland City Elementary	September 13, 2021	PTO	3,006
Glenclyff Elementary	October 13, 2021	PTO	7,819
Kingston Elementary	March 8, 2022	PTO	19,363
Brighton High School	June 24, 2022	Football Booster Club	1,719

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SCHOOL SUPPORT ORGANIZATIONS – MISAPPROPRIATED FUNDS 2015 – 2023			
District/School	Date of Report	Organization	Misappropriated Funds (rounded)
East Hickman High School	August 25, 2022	Football Booster Club	\$ 1,290
Cordova High School	October 5, 2022	Homerun Booster Club	6,815
Obion County High School	October 7, 2022	Baseball Booster Club	9,160
Bradley Central High School	February 28, 2023	Band Booster Club	2,070
McKenzie High School	September 8, 2023	On Deck Club	\$12,593
		Misappropriated Funds	\$ 594,462

* Questionable per Audit

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TOP 10 THINGS SCHOOLS MUST KNOW AND SSOs MUST ENSURE COMPLIANCE	
1)	Are the schools' SSOs properly organized (<i>i.e.</i> , articles of incorporation, bylaws, policies, etc.)?
2)	Are the schools' SSOs in compliance with local board policy (see Manual page 9)?
3)	Are the schools' SSOs up-to-date with annual filing requirements (<i>i.e.</i> , Secretary of State, IRS)?
4)	If the SSO is an IRC §501(c)(3), are IRS filing requirements up-to-date?
5)	Are the members of the Board of Directors proper?

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TOP 10 THINGS SCHOOLS MUST KNOW AND SSOs MUST ENSURE COMPLIANCE

- 6) Does the SSO have adequate controls in place to protect its assets, which ultimately benefit the school (see *Manual* page 2, page 4)?
- 7) Is the SSO complying other aspects of laws (fees, sales tax, etc.)?
- 8) Is the SSO properly insured, which ultimately protects the school/school system and its members?
- 9) Why is the SSO requesting permission to hold a fundraiser? What are proposed uses of funds?
- 10) Is the fundraiser appropriate (both in the activity and expenditure of funds)?

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PURPOSE OF SCHOOL SUPPORT ORGANIZATIONS

- The **sole purpose** of school support organizations is to provide “***financial support*** to help carry out academic, arts, athletic, and social programs to further educational opportunities for the children of this state” (see Tenn. Code Ann. §49-2-602).
- In all transactions, ask how does this activity (disbursement, fundraiser, etc.) support the SSO’s purpose for existence (mission)?

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HISTORY AND CREATION OF SSOs



LAWS/RULES:

- TENN. CODE ANN. §49-2-601 *ET SEQ*
- CHARTERS
- BYLAWS

IN THE BEGINNING...
PTA MOM CONVICTED OF STEALING THOUSANDS DENIED PAROLE
Posted: May 16, 2016 5:30 PM CDT Updated: May 30, 2016 5:51 PM CDT



JULIE BUCHANAN TRIED TO EXPLAIN WHY SHE STOLE MONEY FROM SO MANY PEOPLE.

"I WAS GREEDY AND SELFISH AND SELF-ABSORBED," BUCHANAN TOLD A PAROLE HEARING OFFICER. "THERE IS NO EXCUSE. I STOLE THE MONEY, I EMBEZZLED MONEY, WORST OF ALL I HURT PEOPLE THAT WERE MY FRIENDS."

IN 2000, BUCHANAN, THEN PRESIDENT OF THE GRANBERY ELEMENTARY SCHOOL PTA, STOLE MORE THAN \$100,000, INCLUDING RAIDING THE FUND OF A 9-YEAR-OLD GRANBERY STUDENT DYING OF CANCER.

NASHVILLE, TN (WSMV) -
 THE PTA MOTHER WHO STOLE MORE THAN \$100,000, INCLUDING MONEY FROM A YOUNG BOY DYING OF CANCER, WAS UP FOR PAROLE ON MONDAY.

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HISTORY AND CREATION OF SSOs

- In 2007 the General Assembly passed legislation to create and regulate SSOs.
 - This legislation was in response to ***substandard handling of cash raised for schools and school organizations***, i.e., funds were being abused and used for purposes unrelated to the goals and objectives of the organization.
 - Did the legislation help any?
- These laws are codified at Tenn. Code Ann. §49-2-601, *et seq.*, and known as *The School Support Organization Financial Accountability Act*.

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EVOLUTION OF SSOs

- SSOs are legally independent corporations and are not-for-profit (at least on the state level) since the ***sole mission*** is to support the specific activity or school.
- As a standalone corporation, SSOs are governed by a board of directors (see *Manual*, page 8).
- The board of directors is responsible for the SSO's compliance with state law and local board policy (see *Manual*, page 7).
- To a certain extent, such a legal standing separates liability of the board of education of the district and the board of directors of the SSO.

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EVOLUTION OF SSOs

- The board of directors is responsible for any *ultra vires* activities, meaning actions taken "beyond the powers" of the board.
- In corporate law, *ultra vires* describes acts attempted by a corporation that are beyond the scope of powers granted by the corporation's articles of incorporation or granted by a clause in its Bylaws.

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DOCTRINE OF *ULTRA VIRES*

A Latin phrase used in law to describe an act which requires legal authority but is done without it.

- Ultra vires acts are simply those acts that Board members are unauthorized to take. Individuals or groups of individuals who exceed their authority in such a manner cannot only put the organization at risk but also **expose themselves to personal liability for such acts.**
- Make sure all votes are correctly tabulated on all issues requiring a vote...
- If your vote is no, make sure you say it loud and proud...

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EVOLUTION OF SSOs

- Documents that all SSOs must have include:
 - Charter (articles of incorporation), and any amendments
 - Bylaws, and any amendments – equivalent to a policy manual; how the SSO is governed, operated, and takes care of essential formalities
 - Accounting and Internal Control Policies, and any amendments (see *Manual* page 9)
 - Documentation of its recognition as a nonprofit organization
 - Official Minutes of all Meetings – must conduct regular business meetings (see *Manual* page 9)
 - EIN

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SCHOOL SUPPORT ORGANIZATION BYLAWS



BYLAWS:
IN A NUTSHELL, BYLAWS ARE RULES ADOPTED BY
AN ORGANIZATION TO CONTROL THE ACTIONS OF
ITS MEMBERS

SCHOOL SUPPORT ORGANIZATION BYLAWS

- Arguably, the most important document your SSO will ever draft...
- Bylaws act as your organization's internal affairs guidebook; your organizational manual...
- Bylaws set forth procedures and guidelines for processes, such as electing officers, holding meetings, membership structure, etc.
- Bylaws also help guide the actions and decision-making of the Board of Directors, and help prevent, or resolve, conflicts or disagreements.

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SCHOOL SUPPORT ORGANIZATION BYLAWS

- Bylaws are an internal legal document (bylaws do not have to be filed with any state or federal governmental entity, but may be requested)...
- SSO bylaws should be a public document, as such increases the organization's transparency and keeps your organization accountable to its mission.
- SSOs should share its bylaws with the school, school district, members, officers, directors, donors, etc.

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SCHOOL SUPPORT ORGANIZATION BYLAWS

➤ SSO bylaws should include, but not necessarily limited to,

- 1) General Information – outline basic information about your organization, including name and address...
- 2) Statements of Purpose – if your SSO is an IRC 501(c)(3) organization, your bylaws must state,

“This corporation is organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code.”

Afterwards, include a more specific statement of the SSOs mission and goals.

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SCHOOL SUPPORT ORGANIZATION BYLAWS

- 3) Leadership – Establish the Board of Directors and any officers the SSO needs

- defining how many directors the SSO will have,
- the length of their terms,
- what will be the process for electing, replacing, and removing any member.
- Clarify who has the decision-making power, what percentage of members need to approve a decision, and if any director/officer has veto rights.

➤ Here, consider term limits, what constitutes a quorum (which is the minimum number of members who must be present for an official decision to be made), etc.

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SCHOOL SUPPORT ORGANIZATION BYLAWS

- 4) Membership – Specify members, if any, and what are their rights. If you don't have members with voting rights, then include *“The membership of the SSO shall consist of the members of the Board of Directors.”*

- 5) Meeting and Voting Procedures – When will the SSO meet, how many meetings per year, when and where the meetings will take place, etc.

- 6) Conflict of Interest Policy – Include a statement such as, *“The decisions of the Board members or officers cannot result in action that conflicts with the nonprofit's cause. This includes excess benefit transactions or the private benefit of a director or officer.”*

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SCHOOL SUPPORT ORGANIZATION BYLAWS

- 7) Committees – Will your SSO have committees? If so, how formed, for what purpose, how many, when will committees be dissolved/abolished, etc.
 - 8) Dissolution Process – This clause essentially outlines how your organization will distribute its assets in case of dissolution.
 - 9) Amendments – Include a clear process for amending bylaws...
- The SSOs bylaws should be a working document, amended when necessary, and used often.
- Bylaws that get put on a shelf to gather dust are useless.

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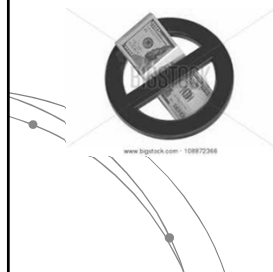
SCHOOL SUPPORT ORGANIZATION POLICIES

As part of the Bylaws, or in a separate bound book, the SSO must adopt policies, that should address, but not necessarily limited to:

- 1) Conflict of Interest
- 2) Records Retention and Destruction
- 3) Code of Ethics
- 4) Requirements of the *Manual*

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SCHOOL SUPPORT ORGANIZATIONS – NO AUTHORITY TO MAINTAIN INDIVIDUAL STUDENT ACCOUNTS



Do school support organizations possess the authority to maintain individual student fundraising accounts?

**SCHOOL SUPPORT ORGANIZATIONS –
NO AUTHORITY TO MAINTAIN INDIVIDUAL STUDENT ACCOUNTS**

- Tenn. Code Ann. §49-2-602 specifies that the sole purpose of school support organizations is to provide “**financial support to help carry out academic, arts, athletic, and social programs to further educational opportunities for the children of this state**”.
- Tenn. Code Ann. §49-2-608 provides, “A nongovernmental group or organization, including school support organizations, may not:
 - 3) Use school support organization funds for a purpose other than purposes related to the goals and objectives of the school support organization **that relate to supporting a school district, school, school club or school academic, arts, athletic or social activity;**

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**SCHOOL SUPPORT ORGANIZATIONS –
NO AUTHORITY TO MAINTAIN INDIVIDUAL STUDENT ACCOUNTS**

- The statutes do not mention **individuals**.
- This means that the **sole purpose** of a school support organization is to **benefit a group as a whole and not to benefit individuals**.
- If a school support organization maintains individual accounts, such as student accounts based on participation or some other measure, **the organization is benefitting individuals, not the group as a whole**.
- Fourteen (14) years ago, the Comptroller stated the same:

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**SCHOOL SUPPORT ORGANIZATIONS –
NO AUTHORITY TO MAINTAIN INDIVIDUAL STUDENT ACCOUNTS**

**THE SCHOOL SUPPORT
ORGANIZATION FINANCIAL
ACCOUNTABILITY ACT OF 2007
(AS AMENDED 2008)**

Presented by
Chadwick W. Jackson, JD
Staff Attorney
Office of the Comptroller of the Treasury
Division of Municipal Audit

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**SCHOOL SUPPORT ORGANIZATIONS –
NO AUTHORITY TO MAINTAIN INDIVIDUAL STUDENT ACCOUNTS**

Credits against
extracurricular activity fees

- Since a "school support organization" may not use its funds for a purpose other than those related to its goals and objectives that relate to supporting a school district, school, school club, or school academic, arts, athletic or social activity... TCA 49-2-608(3)
...it would appear that credits to individual accounts are not allowed under the law other than those credits which are applied to all students who participate in the club or activity.

**SCHOOL SUPPORT ORGANIZATIONS –
NO AUTHORITY TO MAINTAIN INDIVIDUAL STUDENT ACCOUNTS**

- Such practices are viewed by the IRS as cooperative fundraising.
- Such fundraising can result in the loss of tax-exempt status for the SSO and can result in taxable income to the individuals. This is referred to by the IRS as a private benefit, and regulations provide...
 - A public charity is prohibited from allowing more than an insubstantial accrual of private benefit to individuals...
 - This restriction is to ensure that a tax-exempt organization serves a public interest, **not a private one**.
 - If a private benefit is more than incidental, it could jeopardize the organization's tax-exempt status.

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**SCHOOL SUPPORT ORGANIZATIONS –
NO AUTHORITY TO MAINTAIN INDIVIDUAL STUDENT ACCOUNTS**

See **Manual** page 37:

- "The IRS has found that the use of individual fundraising accounts frequently results in illegal private benefits and strongly encourages its members not to use individual fundraising accounts since they may result in fines and penalties from the IRS and/or loss of tax-exempt status."
- "When fundraising proceeds are attributed to specific students and used to offset fees or costs incurred by those students based upon the amount sold or the amount of time worked, it represents income to the students/parents. It is considered private benefit or inurement to the individuals."
- "Represents income" equals taxable income.

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SCHOOL FEES



RULES/LAWS:

- STATE CONSTITUTION
- STATE STATUTE
- STATE BOARD OF EDUCATION RULE

CONSTITUTIONAL LAW

Tennessee Constitution, Art. XI, §12 provides, in part, “The state of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support and eligibility standards of a system of **free public schools**.”

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STATE STATUTE

Tenn. Code Ann. §49-2-110(c) provides, “The school shall not require any student to pay a fee to the school for any purpose, **except as authorized by the board of education**, and no fees or tuitions shall be required of any student as a condition to attending the public school or using its equipment while receiving educational training (emphasis added).”

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STATE BOARD OF EDUCATION RULE

To this end, State Board of Education Rule 0520-01-02-.16(1)(a), provides, in part, “No fees or tuition shall be required of any student as a condition of attending public schools or using its equipment while receiving educational training.”

- (b), provides, in part, “Local boards of education may adopt a policy requesting, but not requiring certain school fees of any student, regardless of financial status (including eligibility for free or reduced price lunch). All school fees **must be authorized by the local board of education.**”

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SCHOOL FEES ARE NOT SSO FEES

ISSUE: Several school support organizations of our district charge students a fee to participate in school sponsored activities, such as band, cheer, and athletics. If the student wishes to participate in such activities, this fee is **mandatory and those students who do not pay the fee are not allowed to participate.** In one of your seminars I left with the impression that this may not be appropriate. Can you explain further?

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SCHOOL FEES ARE NOT SSO FEES

- **“This practice is contrary to state law which requires school-related fees to be deposited into the school’s bank account”** (see Officers of the Warren County High School Pioneer Band Boosters June 27, 2012, emphasis added).
- Tenn. Code Ann. §49-2-603(6)(F) defines student activity funds as “all money received from any source for school-sponsored activities or school sponsored events held at or in connection with a school, and specifically include, but are not limited to, any **money raised from fees charged students**” (emphasis added).

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SCHOOL FEES ARE NOT SSO FEES

- When students are charged a fee for participation in school-sponsored activities, only the Board of Education can authorize such fees.
- Test: ***whether the student simply has to pay a fee to be involved in the activity.***
 - If yes, only the school, after approval of the Board of Education, can require payment of the fee.
 - SSOs cannot require students or their parents to pay a fee for participation in a school-sponsored activity. Such fees, if approved, belong to the school.

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SCHOOL FEES ARE NOT SSO FEES

See **Manual** page 39:

- “SSOs must not charge fees to students to participate in school-sponsored activities or events. ***State law makes no provisions*** for SSOs to charge fees to students or their parents for participation in school-sponsored activities or events.” (*Dillon’s Rule?*)
- “Required or ‘suggested minimum’ financial participation of students or their parents, whether through donations or fundraising, will be interpreted as charging fees....”

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GAMES OF CHANCE



RULES/LAWS:

- STATE CONSTITUTION
- ATTORNEY GENERAL OPINION
- WHAT ABOUT SCHOOL SUPPORT ORGANIZATIONS?

GAMES OF CHANCE – SECRETARY OF STATE’S WEBSITE

- **Penalty:** What are the consequences for holding an unauthorized event?
 - If the Division of Charitable Solicitations is notified of an unapproved event, the Division will notify the local district attorney general. Conducting an unapproved game of chance may be a violation of the criminal gaming statute, and local law enforcement has jurisdiction to investigate and prosecute the individuals responsible for the event.

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GAMES OF CHANCE – SECRETARY OF STATE’S WEBSITE

- If I don’t call it a raffle or sell tickets, but ask for donations for a chance to win a prize, is that allowed?
 - No. An event is considered a raffle if someone must pay for a chance to win a prize and would be a violation of law. It does not matter that the payment is called a “donation.”

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GAMES OF CHANCE

- On December 14, 2018, the Tennessee Attorney General issued its latest opinion regarding gambling in Tennessee (RE: Legality of Sports Betting in Tennessee, see AGO No. 18-48). Prior to this opinion, the last time the Tennessee Attorney General released an opinion regarding gambling in Tennessee was May 23, 2014 (RE: Lottery-Ticket Pool, see AGO No. 14-58).
- Tenn. Code Ann. §39-17-501(1) provides, in relevant part, “Gambling is contrary to the public policy of this state and means *risking anything of value for a profit whose return is to any degree contingent on chance...*” (emphasis added).

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GAMES OF CHANCE - CONSTITUTION

Article XI, Section 5 provides, in part, “The Legislature shall have no power to authorize lotteries for any purpose, and shall pass laws to prohibit the sale of lottery tickets in this state,

- except that the legislature may authorize a state lottery if the net proceeds of the lottery’s revenues are allocated to provide financial assistance to citizens of this state to enable such citizens to attend post-secondary educational institutions located within this state...

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GAMES OF CHANCE - CONSTITUTION

All other forms of lottery not authorized herein are expressly prohibited unless

- authorized by a two-thirds vote of all members elected to each house of the General Assembly for an annual event operated for the benefit of a 501(c)(3) organization located in this state, as defined by the 2000 United States Tax Code or as may be amended from time to time.”

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GAMES OF CHANCE – ATTORNEY GENERAL

- “The term ‘lottery,’ as used in article XI, section 5, refers to ‘a game of hazard in which small sums are ventured for the chance of obtaining a larger value in money or other articles” (see AGO 18-48).
- The Tennessee Attorney General in Opinion 05-159, and reemphasized in Opinion 18-48, set forth the elements of the traditional test to determine if an activity is a lottery, *i.e.*, illegal gambling.

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GAMES OF CHANCE – ATTORNEY GENERAL

- “Under the traditional test, three elements must be present in order for a transaction to be considered a lottery:
 - 1) chance, (the activity)
 - 2) prize, and
 - 3) consideration.” (amounts paid by participant)
- “To determine whether the required element of “**chance**” is present, courts look at the **extent to which distribution of prizes is based upon chance as opposed to skill.**”

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GAMES OF CHANCE – ATTORNEY GENERAL

- The Opinion provides that “it is **the character of the contest** itself, the **particular facts** of the game itself, not the skill or lack of skill of **an individual participant** that determines whether the game is one of chance or skill.”
- “It is not the **name of the game** that determines its legality, but the **nature of the game itself, however skillfully disguised....**”

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GAMES OF CHANCE – ATTORNEY GENERAL

- “Games which have been deemed games of skill, rather than games of chance, are chess, checkers, bowling, baseball, archery, golf and spelling contests.”
- Opinion No. 18-48 clarified “that a fishing contest that awards prizes to contestants who catch specific tagged fish would be a game of chance.”

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WHAT ABOUT SCHOOL SUPPORT ORGANIZATIONS?

- School Support Organizations that are not IRC §501(c)(3) organizations cannot conduct games of chance as fundraisers.
- School Support Organizations that are IRC §501(c)(3) organizations may conduct an annual game of chance if properly approved and authorized by the Tennessee General Assembly, with the director of schools' approval.
- If approved, the only authorized games are "raffles, reverse raffles, cakewalks, and cake wheels."

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WHAT ABOUT SCHOOL SUPPORT ORGANIZATIONS?

- Gaming events not allowed in Tennessee include, "bingo, poker games and/or tournaments, pulltabs, punchboards, video lottery games, instant and online lottery games, keno and games of chance associated with casinos including, but not limited to slot machines, roulette wheels, and the like."

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GAMES OF CHANCE

- So what are games of chance?
 - Cake walks, where there is one winner?
 - Cake walks, where everyone who participates get a cupcake?
 - Ticket sales with a drawing to split the pot?
 - Ticket sales with a drawing; the person with the ticket drawn gets a chance to shoot a free throw; if he/she makes the shot, the pot is split?
 - Bingo (in its purest form)!
 - Door Prizes?

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REQUIRED ANNUAL REPORTING



RULES/LAWS:

- ANNUAL REPORT DUE TO TENNESSEE SECRETARY OF STATE
- TAX RETURNS DUE TO INTERNAL REVENUE SERVICE

REQUIRED ANNUAL REPORTING

- All SSOs registered in Tennessee must file an annual report with the Division of Business Services.
 - Due date – on or before the first (1st) day of the fourth (4th) month following the close of the SSO's fiscal year.
 - Reports are customized with current information of record relating to the specific SSO.
 - Annual report forms are not available as blank forms and SSOs must file its annual report using the preprinted forms generated by the Division of Business Services.
 - Extremely important to have your agent of record up-to-date with the Division of Business Services.

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REQUIRED ANNUAL REPORTING

- The Division of Business Services automatically prepares and mails an annual report form to each active SSO during the ending month of the SSO's fiscal year.
- If your SSO has not receive an annual report...
 - Most likely, officers from prior years failed to file the annual report, thus the Secretary of State has administratively dissolve the organization.
 - If administratively dissolved, ***fundraising is prohibited.***

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REQUIRED ANNUAL REPORTING

- A common reason that the Secretary of State administratively dissolves an SSO is failure to deliver its properly completed annual report to the Division of Business Services within two (2) months after the annual report is due.
- Failure to file within this time frame is grounds for dissolution.
- If the SSO fails to file on time, the Division of Business Services will serve a written notice on the SSO by first class mail (even so, the SSO will probably not receive the notice).

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REQUIRED ANNUAL REPORTING

- Within two (2) months after service of the written notice, the SSO must correct the deficiency or the Division of Business Services will issue a certificate of dissolution.
- An administratively dissolved SSO continues its corporate existence; however, it may not carry on any business (i.e., fundraisers) except that which is necessary to wind up and liquidate its business and affairs.

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REQUIRED ANNUAL REPORTING

- Even if administratively dissolved, an SSO may apply for reinstatement.
- Any and all outstanding annual reports must accompany the application for reinstatement.
- Once all deficiencies are removed, the Division of Business Services will cancel the certificate of dissolution, prepare a certificate of reinstatement, and serve the certificate on the SSO.

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REQUIRED ANNUAL REPORTING

- A reinstatement relates back to and takes effect as of the effective date of the administrative dissolution and the SSO resumes doing business as if the administrative dissolution had never occurred.
- An SSO that is not in good standing does not exist and school administrators must not allow the SSO to conduct fundraisers in the name of the school or on school grounds.

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REQUIRED ANNUAL REPORTING

- School administrators and SSO officers can check the status of any SSO from the Secretary of State's website or by going to
 - <http://tnbear.tn.gov/Ecommerce/FilingSearch.aspx>
- From this website, you can determine, among other things:
 - 1) Active/Inactive Status
 - 2) Annual Report Due date
 - 3) Registered Agent's Name and Address
 - 4) History of filings

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REQUIRED ANNUAL REPORTING

- What about required annual reporting to IRS?
 - Ouch!!
 - **Word of caution:** I do not give tax advice about organizations for which I am not engaged, and nothing contained herein should be construed as receiving tax advice.

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REQUIRED ANNUAL REPORTING

- Since our SSO is a nonprofit group, we don't pay any taxes; thus, we don't have to file a tax return.
 - In my opinion, not true.
- Your SSO must report annually on its finances and basic operations, and
 - this is true whether the SSO is incorporated or not, and
 - whether or not it is officially recognized by the IRS as tax exempt under IRC §501(c)(3).

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REQUIRED ANNUAL REPORTING

- *"Thousands of school booster clubs appear to be out of compliance with IRS rules...requiring tax returns to be filed. Failure to seek federal tax-exempt status, and file tax return, raises significant liability for school booster clubs and the schools for which these groups raise funds."*
- Initially, to be recognized as an IRC §501(c)(3) organization, the SSO must file Form 1023 with the IRS.
 - Filing Form 1023 can be quite expensive; however, it is a one-time cost.

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REQUIRED ANNUAL REPORTING

- Annually, the SSO should file a version of Form 990, "Return of Organization Exempt From Income Tax."
- The return is due by the 15th day of the 5th month following the close of the SSO's fiscal year.
- It is generally an information return, since normally there are no taxes due.
- The forms allow the public to understand how the SSO handled its funds throughout the year, i.e., funds raised and what the SSO did with the funds.

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REQUIRED ANNUAL REPORTING

- By IRS rules and regulations, the three (3) most recent tax returns must be kept available for public inspection.
- Most SSOs can file Form 990-N electronically.
 - Organizations with gross receipts of less than \$50,000.

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REQUIRED ANNUAL REPORTING

- If your SSO has gross receipts greater than \$50,000, then file form 990-EZ.
- So, how does the IRS even know we are in existence?
 - Did your SSO file Form SS-4 to get an EIN for banking purposes?
- **Note:** SSOs shall not advertise that donations to the SSO are tax deductible unless the organization has achieved tax exempt status from the Internal Revenue Service", i.e., it is an approved IRC §501(c)(3) organization (see *Manual*, page 10).

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REQUIRED ANNUAL REPORTING

- So what if the SSO is not recognized as an IRC §501(c)(3) organization?
 - The SSO may have to pay federal income tax on the funds raised.
 - The SSO may be required to file Form 1120 (Corporate Tax Return) annually with the IRS.

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REQUIRED ANNUAL REPORTING

- How do these tax issues potentially affect parents?
 - If parents receive monetary deductions on fees for extracurricular activities, the IRS may require those parents to account for those fee credits as income.
 - Service performed in exchange for a benefit equals income.
 - See Kentucky case....
 - Donations to an SSO that is not an IRC §501(c)(3) organization are not tax deductible for the donor and...
 - ...an SSO should not advertise as all donations are tax deductible.

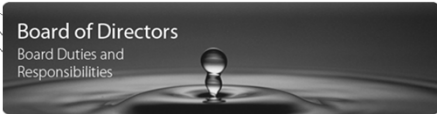
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BOARD MEMBER RESPONSIBILITIES AND LIABILITIES

LAWS/RULES:

- DUTY OF LOYALTY
- DUTY OF CARE
- CONFLICTS OF INTEREST
- PROHIBITED ACTS/TRANSACTIONS

Board of Directors
Board Duties and
Responsibilities



BOARD MEMBER RESPONSIBILITIES AND LIABILITIES

- Tennessee law imposes upon all board members the duty of loyalty and the duty of care.
 - The duty of loyalty means that a board member must act with undivided loyalty in the best interests of the SSO and will not seek to benefit personally from the business activities of the SSO served.
 - i.e., conflicts of interest – should have a policy addressing such interests – a board member cannot directly or indirectly benefit from business transactions (see Riverdale Quarterback Club).

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BOARD MEMBER RESPONSIBILITIES AND LIABILITIES

- The duty of care means that a board member must
 - act reasonably, as a prudent person in a similar circumstance would;
 - be familiar with the SSO's activities and financial condition, and;
 - must participate regularly in board meetings.
 - How are officers elected to serve?
- Basically, a board member acts in good faith and makes informed decisions.
- Under Tennessee law, a board member may be personally liable to the SSO for the harm it suffers if the fiduciary duties are breached.

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PROHIBITED ACTS/TRANSACTIONS

- The intent of the Act is to create and maintain an “arms length” separation between schools, its administrators and employees, and school support organizations.
- Tenn. Code Ann. §49-2-604(g) provides that a school representative cannot
 - act as the treasurer or bookkeeper,
 - nor sign checks (which prohibits a school representative from using a debit/credit card),
 - nor can a majority of the voting members of the board of directors be composed of school representatives (see *Manual*, page 35)

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PROHIBITED ACTS/TRANSACTIONS

- The term “school representative” is defined by Tenn. Code Ann. §49-2-603(3)(A)(i) and (ii) as
 - “a school board member,
 - the director of schools,
 - a principal,
 - any individual who is primarily responsible for accounting for school system funds or the funds of an individual school, and
 - any individual who works for the school system and who as part of the individual's employment by the school system is charged with directing or assisting in directing the related school club or activity” (see *Manual*, page 3).

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PROHIBITED ACTS/TRANSACTIONS

- Thus, other than the obvious, the law applies or appears to apply, at a minimum, to
 - the sponsor/coach, and assistants, that the SSO is supporting (see *Manual*, page 3),
 - a school bookkeeper,
 - anyone working in the school system's finance department,
 - anyone working as the chief of staff or as the COO, and his/her assistants, and
 - anyone working as an assistant to the director of schools.

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PROHIBITED ACTS/TRANSACTIONS

In my opinion, anyone working for the school system which would give the appearance that a conflict exists between the school or school system and the SSO should not be allow to serve as an SSO officer, director, or voting member of the board.

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PROHIBITED ACTS/TRANSACTIONS

Although the Comptroller's Office did not make a comment...

- An audit report revealed that the booster club was governed by a board of directors (as it should be).
- The head coach (1), all assistant coaches (at least 2, total 3) and the school principal (4) serve as permanent members of the board (so board would have to be 9 members minimum to comply with law).
- The head coach appoints the booster club officers, who also serve as board members (can these appointees fulfill their fiduciary duties and responsibilities?).
- So what happens when the head coach disagrees with his/her appointed president, or another appointed board member?
- If the board has only nine members, an appointed member quits, gets fired, etc., the board can no longer operate since it would not be compliant with State statute.

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PROHIBITED ACTS/TRANSACTIONS

- An SSO cannot
 - 1) use the school's tax exempt certificate (discussed in more detail later),
 - 2) bind the school or school district in any contract in which it enters,
 - 3) use funds generated from fundraisers that do not support its goals and objectives, nor
 - 4) use the school district's employer identification number.

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WHAT ARE INTERNAL CONTROLS?



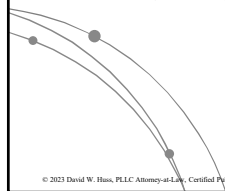
WHAT INTERNAL
CONTROLS DOES YOUR
SSO HAVE IN PLACE?



RISKS ARE A FACT OF LIFE

- An organization can never completely avoid risk if it is taking action to accomplish its mission.
- The best an organization can do is manage the risks it faces to an acceptable level, consistent with achieving the organization's objectives.

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WHAT ARE INTERNAL CONTROLS?

- Internal controls are systematic measures instituted by an organization to
 1. Conduct its business in an orderly and efficient manner;
 2. Safeguard its assets and resources;
 3. Deter and detect errors, fraud, and theft;

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WHAT ARE INTERNAL CONTROLS?

4. Ensure accuracy and completeness of its accounting data;
5. Produce reliable and timely financial and management information; and
6. Ensure adherence to its policies, laws, and regulations.

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MINIMUM INTERNAL CONTROLS NECESSARY

As used within the *Manual*

- “**Requirement**” means the SSO **must** perform
 - “Required policies and procedures are a matter of **legal** compliance. Required guidance is **not** optional. The words **must** or **shall** indicate required guidance” (see *Manual*, page 4).
- “**Recommended**” means the SSO **should consider**
 - “Guidance as an approved management tool, accounting procedure, or internal control, for implementing the requirements. “**Should**” or “**may**” indicate recommended guidance” (*id.*).

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MINIMUM INTERNAL CONTROLS NECESSARY

The *Model Financial Policy for School Support Organizations (Procedures Manual)* now contains **required** internal control procedures and **recommended** internal control procedures when an SSO chooses to utilize certain methods of receipt and disbursement of funds.

- “Accounting and internal control policies and procedures must be documented and approved by the officers and/or board of directors at a regular meeting” (see *Manual*, page 6).
- “...a checklist of monthly and annual duties, both for collection and disbursement transactions, **shall** be prepared” (*id.*, emphasis added).

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MINIMUM INTERNAL CONTROLS NECESSARY

- “Accounting and internal control policies and procedures must be designed and implemented to ensure compliance with laws and regulations...;
 - to ensure that funds, property, and other assets are safeguarded against waste, loss, unauthorized use or misappropriation; and
 - to permit the preparation of accurate and reliable financial records and reports” (see *Manual*, page 6).
- “**Shall** designate an officer as custodian of records” (see *Manual*, page 7).
- “The officers and/or board of directors shall assume responsibility for the operation of the SSO. This responsibility **cannot** be delegated” (*id.*).

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MINIMUM INTERNAL CONTROLS NECESSARY

- “The officers and/or board of directors must ensure compliance with
 - *School Support Organization Financial Accountability Act*,
 - the *Model Financial Policy for School Support Organizations*,
 - Internal Revenue Service regulations,
 - Tennessee nonprofit laws,
 - and other applicable federal or state laws and regulations” (*id.*).
- “...the officers and/or board of directors are responsible for the ethical operation of the entity. This responsibility **cannot** be delegated” (*id.*).
- “...must comply with applicable policies of the local board of education” (*id.*).

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MINIMUM INTERNAL CONTROLS NECESSARY

- “Disbursements and collections can be made by any legal method **over which adequate internal controls can be established**” (see *Manual*, page 9), including the use of credit/debit cards.
 - If adequate internal controls cannot be designed and implemented, the particular method shall **not** be used (*id.*).
- Authorized banking institutions, accounts, and signatories shall be included in the minutes. All new accounts must be properly authorized (see *Manual*, page 10).
 - Any bank account, loan, security, etc., shall be in the name of the incorporated SSO (*id.*).
 - Titled owner of any property shall be in the name of the incorporated SSO (*id.*).
- Must maintain segregation of duties (see *Manual*, page 10 for examples).

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MINIMUM INTERNAL CONTROLS NECESSARY

- “Money shall be deposited in the bank daily if possible, but in all cases, within three days of collection. Deposit slips must include an itemized listing of checks” (see *Manual*, page 10).
- “Bank accounts must be reconciled promptly at the end of each month” (*id.*).
- For other internal controls when various procedures are utilized, see *Manual* pages 12 – 20.

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SCHOOL SUPPORT ORGANIZATIONS – AUTHORITY TO HAVE CREDIT/DEBIT CARDS



Do school support organizations possess the authority to obtain and use a debit/credit card?

SCHOOL SUPPORT ORGANIZATIONS – AUTHORITY TO HAVE CREDIT/DEBIT CARDS

- Tenn. Code Ann. §49-2-610 provides, “The office of the comptroller of the treasury is authorized to adopt a model financial policy for school support organizations.”
- To that end, the Comptroller’s Office adopted and published the **Model Financial Policy for School Support Organizations (Procedures Manual)**.
- A school support organizations’ use of a debit card or credit card is now authorized by the **Model Financial Policy for School Support Organizations (Procedures Manual)** (see **Manual**, pages 12 – 14).

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SCHOOL SUPPORT ORGANIZATIONS – AUTHORITY TO HAVE CREDIT/DEBIT CARDS

- “Use of debit and credit cards **must be authorized** by the officers/board of directors **annually**” (*id.*, emphasis added).
- “Debit and credit cards must not be utilized unless adequate accounting policies and internal controls can be designed and implemented” (*id.*).
- “SSO officers and board members must be aware that authorizing the use of debit and credit cards **increases** the risk that fraud may occur” (*id.*).
- See **Manual** for recommended list of accounting and internal control procedures.

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SALES TAX



- SSOs cannot use the schools’ sales and use tax exemption, nor can the SSO purchase through the school in an attempt to circumvent the law.
- To be sales and use tax exempt, the SSO must apply and receive its own exemption certificate.
- Tax will always be paid on resale items.

FUNDRAISING AND SALES/USE TAXES

- TRR §1320-5-1-.09, provide, public and private schools, grades K–12, and *school support groups*
 - having or conducting more than two (2) sales periods during a calendar year (*i.e.*, fundraisers),
 - having purchased tangible personal property or taxable services *without the payment of tax*,
 - shall be *liable for the use tax based on the purchase price* of the items or services purchased during that calendar year (sales tax paid to the vendor for items to be resold satisfies this requirement).
 - A sales period shall be presumed to be temporary if it is of 30 consecutive days duration or less.

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SALES TAX HOLIDAY

In my opinion, schools, as well as school support organizations that operate concessions via written agreements with the various schools, will not be responsible for remitting sales tax, or use tax, on qualifying food items and food ingredients purchased without the payment of sales tax during the 2023 Sales Tax Holiday that are subsequently resold as concessions during school events.

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SALES TAX HOLIDAY

“Public Chapter 377 (2023) creates a new sales tax holiday starting at 12:01 a.m. on Tuesday, August 1, 2023, and ending at 11:59 p.m. on Tuesday, October 31, 2023. During this period, food and food ingredients may be purchased tax free. Food and food ingredients purchased from a micro market or vending machine remain subject to sales tax” (see Tennessee Department of Revenue Sales and Use Tax Notice, dated May 2023; *see also*, Tenn. Code Ann. §§67-6-102 and 67-6-393).

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SALES TAX HOLIDAY

Applying the laws, rules, and regulations to the issue, a school, or a school support organization, may purchase qualifying food and food ingredients intended for resale exempt from sales tax during the 2023 Sales Tax Holiday, which is normally when schools and school support organizations pay sales tax to be exempt on the subsequent resale of such items. When these items are resold, the subsequent resale is not subject to sales and use taxes as provided in Tenn. Code Ann. §67-6-229.

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SALES TAX HOLIDAY

The Tennessee Department of Revenue's Legal Department reaches the same conclusion, although on different grounds. As per an email from the Department of Revenue, "the Tennessee Legislature's intent was to provide these qualifying food products tax free to anyone, regardless of whether or not the purchasing entity already held an exemption. Essentially, it is a temporary "product exemption", meaning all who purchase a qualifying product may do so without the payment of sales tax or incurring a use tax liability."

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SSO OPERATING CONCESSIONS



LAWS/RULES:

- STATE STATUTE
- **INTERNAL SCHOOL
UNIFORM
ACCOUNTING
POLICY MANUAL**

SSO OPERATING CONCESSIONS

Tenn. Code Ann. §49-2-606 provides that a local board of education may grant the principal of a school the authority to enter into an agreement with a school support organization to operate and collect money for a concession stand ... at a school related ... athletic ... event ... on school property where any money it collects or any portion designated by the agreement shall be considered as school support group funds and not as student activity funds, provided, that:

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SSO OPERATING CONCESSIONS

- ... (2) The school support organization provides the school with the relevant collection documentation that would have been required pursuant to the provisions of the manual produced under Tenn. Code Ann. §49-2-110 for student activity funds.

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SALARY SUPPLEMENTS



TOPICS:

- BOARD EMPLOYEES
- BOARD POLICY
- STATE LAW
- SSOs
- QUESTIONS

SALARY SUPPLEMENTS

- What is the standard, the law, the practice on paying school employees from internal school funds?
- For example, is an individual school permitted to pay a faculty member a “supplement” from internal school funds?

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SALARY SUPPLEMENTS

- Most, if not all, Boards of Education have a policy that provides,
 - “Salaries of all employees, including substitute and **supplemental pay**, shall be paid by the Board. **No payment** to any employee for service performed on behalf of the school system shall be made **from any source** other than the Board” (emphasis added).

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SALARY SUPPLEMENTS

- Additionally, The **Internal School Uniform Accounting Policy Manual** provides,
 - “Any supplemental compensation owed to board of education employees for extracurricular activities must be processed through the director of schools’ office in the same manner as salary and other payroll payments. Board of education employees **may not be compensated directly by individual schools** from internal school funds” (emphasis added).
 - Thus, schools cannot pay board employees directly.

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SALARY SUPPLEMENTS

- The same holds true for SSOs...
- The **Manual** provides,
 - “The officers and/or board of directors of any SSO **must comply with applicable policies** of the local education agency (*i.e.* local Board of Education) pursuant to state statutes.”
 - “If the Board of Education implements policies that are more restrictive than those presented in the *Model Financial Policy*, the more restrictive policies of the Board of Education shall be applied.”
- See page 7

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SALARY SUPPLEMENTS

- Additionally, the **Manual** provides, “Payments for salary supplements must not be made directly to the coaches, assistant coaches, or other employees (e.g. teachers, principals) of the Board of Education. Salary supplements for Board employees must be paid through the Board of Education. The SSO must make donations to the Board for this purpose rather than paying Board employees directly (see page 38).”
- If any payments for services are paid by the SSO, the SSO is responsible for IRS reporting requirements, *i.e.*, Form 1099-NEC.

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SALARY SUPPLEMENTS

- Thus, wouldn’t a Board Policy such as...
 - “Salaries of all employees, including substitute and **supplemental pay**, shall be paid by the Board. **No payment** to any employee for service performed on behalf of the school system shall be made **from any source** other than the Board” (emphasis added).
 - ...prevent an SSO from making supplemental payments to a Board employee?

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SALARY SUPPLEMENTS

- In my opinion, yes it does.
- Does it matter within an individual school or school support organization if gift cards are used as the mechanism for payment?

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MISCELLANEOUS QUESTIONS



TOPICS:

- PARENTS SOLICITING DONATIONS
- SCHOOLS COLLECTING SSO FUNDS
- SSO DONATIONS
- ETC.

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PARENTS SOLICITING DONATIONS

Can parents solicit donations for a school or assist in a school fundraiser without becoming a School Support Organization?

- Yes, Tenn. Code Ann. §49-2-603(4)(B) provides that “a group of persons who merely request that students, parents, or members of the general public make donations to a...school...or assist in the raising of funds for a specific purpose under the sponsorship of a school employee where the funds are turned over to the school to be used for the specific purpose for which the funds were raised, shall not be considered a school support organization....”

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PARENTS SOLICITING DONATIONS

- In this particular scenario, all funds are collected by school employees or school volunteers, and the principal becomes responsible for the accountability of the funds.

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SCHOOLS COLLECTING SSO FUNDS

Can the school assist the SSO by collecting funds in the normal manner in which schools collect funds?

- When a school employee receives money while acting in his/her official capacity, that money is required to be accounted for by the school and deposited into the school's bank account.
- However, there is an exception
 - When the funds are sealed

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SCHOOLS COLLECTING SSO FUNDS

- The principal *may* allow funds raised by fundraisers conducted by an SSO outside the school day and involving students to be collected during the school day by the SSO. Such funds shall be SSO funds provided school employees are not involved in the accounting of such funds and the funds are turned in using sealed envelopes.
- School employees are **not allowed to touch money** from an SSO fundraiser unless it is in a sealed envelope and then...the envelope **must remained sealed!** If opened, the funds become school funds and must be properly accounted for.

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SCHOOLS COLLECTING SSO FUNDS

What happens if the envelope is not sealed or if an envelope is not used and the funds are collected by the teacher?

- In the event that money is given directly to a teacher without the use of an envelope or given directly to a teacher without the envelope being sealed, it appears, from the law stated above, that the funds would lose school support organization identity, school employees would be involved in the accounting of such funds, and the school would be responsible for proper accountability.

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SSO DONATIONS

Can a school support organization make a donation to a local charity or needy family from the community?

- In my opinion, a school support organization can only expend funds to support the academic, arts, athletic, and/or social program for which the organization was created to support. Therefore, a donation to a local charity or needy family would be a violation of the *School Support Organization Financial Accountability Act*.

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SSO DONATIONS

- Tenn. Code Ann. §49-2-603(5) defines school support organization funds as “all money, materials, property or securities raised by a school support organization or any organization that represents itself to students, parents or members of the general public to be a school support organization...” Therefore, even “unsolicited” donations received by a school support organization are considered school support organization funds and must be treated as such.

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SSO DONATIONS

- Tenn. Code Ann. §49-2-604(e) provides, “A school support organization's officers shall ensure that school support organization funds are safeguarded and are spent ***only for purposes related to the goals and objectives*** of the organization” (emphasis added).
- Additionally, Tenn. Code Ann. §49-2-608(3) provides, “A nongovernmental group or organization, including all school support organizations, ***may not use*** school support organization funds ***for a purpose other than purposes related to the goals and objectives*** of the school support organization ***that relate to supporting a school district, school, school club or school academic, arts, athletic or social activity***” (emphasis added).

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SSO DONATIONS

- And then there is *Dillon's Rule*: School support organizations are a creation of the General Assembly, thus, if the Tennessee legislature had intended to provide authority to school support organizations to donate to outside organizations or other entities/parties, the Tennessee legislature would have provided such authority. To date, the legislature has not granted such authority.

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